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5 Attorney for Plaintiff,
6 JEFFREY SIMONEK

7
8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 JEFFREY SIMONEK,

12 Plaintiff,

13 vs.

14 CITY OF EL SEGUNDO; EL
15 SEGUNDO POLICE DEPARTMENT,
16 MITCH TAVERA, Chief of Police of the
17 El Segundo Police Department; ERIC
18 ATKINSON; JANET GARZA; RAY
19 GARCIA; JEFFREY HUMPHREY;
20 GREG BURNER; KELLY BURNER;
21 BRIAN FLADHAMMER, DAYNA
22 FLADHAMMER, and DOES 1 through
23 10, inclusive,

24 Defendants.

25 Case No.: 2:15-cv-09190-JAK-ASx

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27 **DECLARATION OF S. HOLTZ
PURSUANT TO RULE 60, RE-
QUESTING RELIEF RE LATE
FILING**

28 (Filed concurrently with Plaintiff's
Memorandum of Points and Authorities in
Opposition to Motion to Dismiss by the
Defendants Greg Burner and Kelly Burner)

Date: July 25, 2016
Time: 8:30 a.m.
Ctrm: 750

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1 DECLARATION OF STEFFENY HOLTZ

2 I, Steffeny Holtz, declare:

3 1. On or about April 26, 2016, I received defendants' Greg Burner's and Kelly
4 Burner's Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a
5 Claim. I immediately calendared the hearing date as July 25, 2016. I checked Local Rule
6 7-9, observed the 21-day provision, and calendared the deadline for filing the
7 Opposition as July 1, 2016.

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9 2. On or about May 31, 2016, I was served with a Notice of Non-Receipt of
10 Opposition to Motion to Dismiss, served by defendants Greg Burner and Kelly Burner. I
11 was surprised.

12 3. I immediately reviewed my calendar for deadlines in connection with the
13 motion, scheduled for July 25, 2016. I noted the deadline calendared by July 1, 2016 for
14 the filing of the opposition, and I noted the two-week lead date scheduled ahead thereof.

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16 4. I then checked the Local Rule 7-9 and confirmed its provision specifying a 21-
17 day deadline prior to the hearing on a motion.

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19 5. That same day, May 31, 2016, I emailed Attorney James M. Lee, attorney for the
20 Burners, and asked him why he had sent the Notice of Non-Receipt of Opposition, and
21 he kindly said that he would check with the staff and get back to me.

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23 6. On June 2, 2016, I received a response from Mr. Lee, and he informed me the
24 Court's Standing Order provides a different and shortened briefing schedule.

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26 7. I then went back and looked at the Standing Order and indeed it does provide a

briefing schedule which would have required a filing by May 17, 2016.

8.I immediately began preparing the Opposition to the Motion to Dismiss. It is now four days later and I have completed the research and drafting for the Motion.

9. The calendar error was based on my mistake only, and was done without any contribution by the client. I apologize to this Honorable Court and to Counsel for the tardy filing. I assure the Court that no disrespect was intended to the Court or its orderly processes. I have only the highest respect for the Court. No sanction is needed to instill future compliance with the Court's orders. I have thoroughly re-reviewed the entire Standing Order.

10.I therefore ask this Honorable Court to excuse the late filing. This declaration is submitted requesting relief under Rule 60. I would stipulate to an order permitting counsel for the Burners to file a reply within the time that they would normally have had, with the Court's approval, of course, should they wish to file a reply. By this declaration I am respectfully offering such a stipulation.

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the United States of America. Executed this June 6, 2016, in Los Angeles California

STEFFENY HOLTZ

BY /s/ Steffeny Holtz

Attorney for JEFFREY SIMONEK